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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CLOANTO CORPORATION,

11 Plaintiff,

12 v.

13 HYPERION ENTERTAINMENT
14 C.V.B.A.,

15 Defendant.

CASE NO. C18-0535JLR

ORDER GRANTING MOTION
TO CONSOLIDATE

16 I. INTRODUCTION

17 Before the court is Defendant Hyperion Entertainment C.V.B.A.'s ("Hyperion")
18 motion to consolidate this matter with *Hyperion Entertainment C.V.B.A. v. Itec LLC*, No.
19 C18-0381RSM (W.D. Wash. 2018) (the "381 Action"). (Mot. (Dkt. # 35).) Plaintiff
20 Cloanto Corporation ("Cloanto") opposes the motion. (Resp. (Dkt. # 38).) The court has
21 considered the motion, the parties' submissions in support of and in opposition
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1 to the motion, the relevant portions of the record, and the applicable law. Being fully
2 advised,¹ the court GRANTS the motion.

3 II. BACKGROUND

4 Both this action and the 381 Action stem from the 2009 settlement of two prior
5 actions before Chief Judge Ricardo S. Martinez relating to a licensing and development
6 agreement. (*See* Am. Compl. (Dkt. # 29) ¶¶ 25-37); *Hyperion Entertainment C.V.B.A. v.*
7 *Itec LLC et al.*, No. 18-0381RSM, (W.D. Wash. 2018) (hereinafter, “381 Action”), Dkt.
8 # 1 (the “381 Compl.”) ¶¶ 18-29; *see generally* *Amiga, Inc. v. Hyperion VOF*,
9 No. C07-0631RSM (W.D. Wash. 2007); *Hyperion VOF v. Amino Dev. Corp.*,
10 No. C07-1761RAK (W.D. Wash. 2007). Cloanto originally brought this suit on
11 December 14, 2017, against Hyperion in the Northern District of New York for breach of
12 the 2009 settlement agreement, copyright infringement, trademark infringement, and
13 unfair competition. (*See generally* Compl. (Dkt. # 1).) Hyperion then filed suit on
14 March 13, 2018, in the Western District of Washington, against Cloanto and other entities
15 for breach of the 2009 settlement agreement and various declaratory judgments of
16 non-infringement and ownership of the trademarks. (*See generally* 381 Compl.) That
17 case, the 381 Action, is pending before Chief Judge Martinez. (*See* 381 Action.)

18 On April 9, 2018, the parties in the New York suit stipulated to transfer the matter
19 to the Western District of Washington. (*See* Stip. (Dkt. # 14).) The parties agreed that
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21 ¹ Neither party requests oral argument (*see* Mot.; Resp.), and the court finds that oral
22 argument would not be helpful to its disposition of the motion, *see* Local Rules W.D. Wash.
LCR 7(b)(4).

1 “the Western District of Washington is both a convenient and appropriate venue in which
2 all claims, issues and defenses . . . can be adjudicated.” (*Id.* at 2.) Significantly, the
3 parties agreed that the case “should be transferred to the Western District of Washington
4 and consolidated with [the 381 Action] for resolution and adjudication.” (*Id.*) Based on
5 that stipulation, the Northern District of New York transferred the case to this District on
6 April 11, 2018. (Transfer Order (Dkt. # 15).)

7 After transfer, Hyperion sought to consolidate this case with the 381 Action. (*See*
8 Mot.) Despite its earlier stipulation, Cloanto opposes consolidation. (*See* Stip. at 2;
9 Resp.) The court now addresses the motion.

10 III. ANALYSIS

11 Federal Rule of Civil Procedure 42(a) provides:

12 If actions before the court involve a common question of law or fact, the
13 court may: (1) join for hearing or trial any or all matters at issue in the
14 actions; (2) consolidate the actions; or (3) issue any other orders to avoid
unnecessary cost or delay.

15 Fed. R. Civ. P. 42(a). The rule affords courts “broad discretion” to consolidate cases
16 pending in the same district. *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir.
17 1987). In considering whether to consolidate, the court considers a number of factors,
18 including “judicial economy, whether consolidation would expedite resolution of the
19 case, whether separate cases may yield inconsistent results, and the potential prejudice to
20 a party opposing consolidation.” *First Mercury Ins. Co. v. SQI, Inc.*, Nos. C13-2110JLR,
C13-2109JLR, 2014 WL 496685, at *2 (W.D. Wash. Feb. 6, 2014).

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1 Here, all factors favor consolidation. Both parties agree that the 381 Action and
2 the instant matter present similar issues of law and fact. (*See* Mot. at 2; Resp. at 4
3 (acknowledging that the 381 Action “involve[s] some of the same issues that arise in the
4 instant action”).) The parties further agree that the two actions center on the
5 interpretation of the 2009 settlement agreement reached in the two cases previously heard
6 by Chief Judge Martinez. (*See* Mot. at 3; Resp. at 4.) Thus, consolidation will serve the
7 interest of judicial economy in three ways: (1) it eliminates the need to file separate
8 motions in each case on similar issues, (2) it allows the court to address overlapping
9 issues in a more streamlined fashion, and (3) it capitalizes on Chief Judge Martinez’s
10 knowledge of the settlement agreement and the prior litigation between parties.
11 Moreover, maintaining two separate cases may yield inconsistent results, and neither
12 party has raised any possible prejudice resulting from consolidation. (*See* Mot.; Resp.)

13 Cloanto does not so much oppose consolidation but instead maintains that the two
14 cases should be “consolidated [before the undersigned judge], as the instant action is the
15 one that was first-filed.” (Resp. at 2 (bolding removed); *see also id.* at 4 (stating that
16 “consolidation in this [c]ourt would be the proper procedural outcome”).) The court
17 disagrees. The first-to-file rule is not absolute or mechanically-applied. *Guthy-Renker*
18 *Fitness, LLC v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 269 (C.D. Cal. 1998).
19 Courts decline to apply the rule in certain equitable circumstances. *Id.* at 270. Here,
20 Chief Judge Martinez’s experience—not only with the settlement agreement at issue but
21 also with the pending 381 Action—persuades the court that strictly adhering to the
22 first-to-file rule is inappropriate. Although Cloanto attempts to downplay Chief Judge

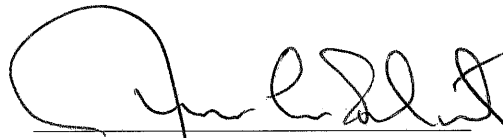
1 Martinez's involvement with the settlement agreement (*see* Resp. at 4-7), it is undisputed
2 that Chief Judge Martinez presided over the previous cases for years and resolved
3 numerous motions, all of which provide him insight into this matter that the undersigned
4 judge does not have, *see generally Amiga, Inc.*, No. C07-0631RSM; *Hyperion VOF*,
5 No. C07-1761RAK.

6 Accordingly, the court grants Hyperion's motion to consolidate the instant action
7 with the 381 Action.

8 IV. CONCLUSION

9 For the foregoing reasons, the court GRANTS Hyperion's motion to consolidate
10 (Dkt. # 35). This case is hereby TRANSFERRED to the Honorable Ricardo S. Martinez
11 as related to *Hyperion Entertainment C.V.B.A. v. Itec LLC et al.*, No. C18-0381RSM. All
12 future pleadings shall bear the cause number C18-0381RSM.

13 Dated this ³⁰30 day of July, 2018.

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15 JAMES L. ROBART
16 United States District Judge
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